

Message Text

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ACTION ARA-10

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FM AMEMBASSY PANAMA

TO SECSTATE WASHDC PRIORITY 5348

INFO AMEMBASSY BOGOTA

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E.O. 11652: N/A

TAGS: BDIS, PN

SUBJECT: FERTILIZER SALE PROBLEM

REF: STATE 232234

1. APPRECIATE ASSURANCES CONVEYED BY DEPARTMENT TO INTERNATIONAL COMMODITIES EXPORT CO. (ICEC) REGARDING EMBASSY EFFORTS ON ITS BEHALF TO RESOLVE TRADE COMPLAINT AGAINST COAGRO (PARA 3 REFTEL). WE CONCUR THAT OUR CALLS ON COAGRO (FEDERATION OF AGRICULTURAL PRODUCTION COOPERATIVES) AND CORP. AZUCARERA LA VICTORIA (GOVERNMENT SUGAR MILL AUTHORITY AND END-USER OF FERTILIZER IN QUESTION) AND OUR LETTERS TO THESE PARTIES ARE AT LIMIT OF WHAT CAN BE DONE TO INFLUENCE SUCH A COMMERCIAL TRANSACTION.

2. STATUS OF NEGOTIATIONS BEST DESCRIBED AS STALEMATE, WITH ICEC CONTINUING TO MAINTAIN IN TWICE-WEEKLY CALLS THAT IT HAD A VALID, ALTHOUGH UNSIGNED, CONTRACT AND COAGRO DENYING ANY LEGAL COMMITMENT. RAUL SIERRA, COAGRO PRESIDENT, CITED FOLLOWING REASONS FOR ENDING NEGOTIATIONS WITH ICEC: A) LATTER'S SEPT. 8 TELEX THREATENING LEGAL ACTION AND JEOPARDY TO COAGRO REPUTATION; B) GOP POLICY OF PROCURING FROM PRIMARY RATHER THAN THROUGH INTERMEDIARY SOURCES; C) PREFERENCE FOR FINANCING TERMS MORE FAVORABLE THAN IRREVOCABLE LETTER OF CREDIT; D) GOVERNMENT POLICY OF PROCURING FROM SOURCES WILLING TO PROVIDE

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TECHNICAL ASSISTANCE AND, EVENTUALLY, COLLABORATE IN ESTABLISHING

LOCAL PLANT. SIERRA REALIZES ICEC MAY RETALIATE VIA LEGAL OR COMMERCIAL CHANNELS BUT PREFERS TO WAIT AND SEE WHAT DEVELOPS. EMBASSY POINTED OUT TO HIM THE RISKS WHICH THIS ENTAILS IN VIEW OF ALLEGED IMPORTANCE IN MARKET PLACE OF ICEC AND ITS PARENT COMPANY, ACLI INTL. MODERNA, ICEC'S REPRESENTATIVE HERE, STATES THAT MR BAUERNFEIND OF AUSTRIAN EMBASSY IN BOGOTA CALLED ON BEHALF OF MANUFACTURER (CHEMIE-LINZ) OF FERTILIZER FOR INFORMATION REGARDING THIS TRANSACTION. ACCORDING TO MODERNA, MANUFACTURER WAS CONSIDERING CLAIM FOR ITS LOSSES GROWING OUT OF ALLEGED CONTRACT BREACH, AND AUSTRIAN AMBASSADOR HAD BEEN INSTRUCTED TO VISIT PANAMA TO LODGE COMPLAINT.

3. KEY ISSUE APPEARS TO BE WHETHER BINDING CONTRACT EXISTED BETWEEN ICEC AND COAGRO. ICEC CLAIMS THAT IT IS LONG AND UNIVERSALLY ESTABLISHED PRACTICE IN SUCH COMMODITY TRANSACTIONS TO EXECUTE CONTRACTS ORALLY, BY TELEPHONE OR TELEX, AND CONTRACT SIGNING ONLY A FINAL FORMALITY. THEY ADD THAT ALLEGED ACCEPTANCE BY COAGRO OF \$75,100 PERFORMANCE BOND AND LATTER'S EFFORTS TO SECURE LETTERS OF CREDIT AND REPEATED REQUESTS TO ICEC FOR MORE TIME TO SECURE SUCH CREDITS REINFORCE THEIR CONTENTION.

ACTION REQUESTED: DEPARTMENT REQUESTED ADVICE WHETHER CONTRACTUAL COMMITMENT CUSTOMARILY RESULTS FROM SUCH NEGOTIATIONS AND EXCHANGES OF COMMUNICATIONS HSORT# OF ACTUAL CONTRACT SIGNING. WE HAVE BEEN ADVISED LOCALLY THAT NO SUCH COMMITMENT EXISTS UNDER PANAMA LAW.

4. NOTWITHSTANDING POSSIBLE ABSENCE OF LEGAL CONTRACT, EMBASSY PLANS TO MAKE ADDITIONAL, INFORMAL APPROACH TO COAGRO. GONZALEZ.

NOTE BY OC/T: #AS RECEIVED.

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